

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 5164 OF 2014

Meer Ahmed Meer Ismail
since deceased through LRs.
Shamshad (Shammu) Mir Ahmed & Ors. ..Petitioners
vs.
Maimunabi Adam Karol & Ors. ..Respondents

Mr. Ramesh Ramamurthy with Mr. Saikumar Ramamurthy for
Petitioners.
Mr. A. S. Khandeparkar with Mr. Amogh Karandikar i/b.
Khandeparkar & Associates for Respondent Nos. 1 and 2.

CORAM : M. S. SONAK, J.
DATE : 17 FEBRUARY, 2015

P.C. :-

- 1] Leave to implead Mr. Ismail Yusuf Kazi. Amendment to be carried out forthwith.
- 2] The aforesaid Mr. Ismail Yusuf Kazi appears through power of attorney holder Mr. Sallaudin Aabdulla Karol.
- 3] Rule. With the consent of and at the request of the learned counsels for the parties, Rule is made returnable forthwith
- 4] This petition challenges the judgment and order dated 16 May 2013 made by the Maharashtra Revenue Tribunal (MRT) allowing the revision petition instituted by the respondents, setting aside the Sub Divisional Officer's order and restoring the Tahsildar's order dated 25 October 2005.

5] The impugned order records that even though the petitioners herein were duly served, they did not remain present and accordingly the matter proceeded exparte.

6] Mr. Ramamurthy, the learned counsel for the petitioners submits that the petitioner is widow. It is true that her husband was served in the proceedings. However, upon his demise, the petitioners do not recollect receiving any notice of the proceedings.

7] The impugned order records that the petitioners were duly served. There is no reason to presume that the statement in the impugned order is not based upon the records available with the MRT. As such, it cannot be accepted that the petitioners were not served with proper notice.

8] Nevertheless, considering the petitioner is a widow, it is possible that the petitioner did not appear before the proceedings before the MRT, on account of some miscommunication or because the implications were not realised. The SDO's order is in favour of the petitioners and there is no reason as to why the petitioner, if properly informed and advised, would not have attended the proceedings before the MRT, in order to defend the order of the SDO.

9] In the aforesaid circumstances, it is appropriate if yet another opportunity is afforded to the petitioners. This shall however be subject to the petitioners paying costs of Rs.5,000/- in favour of the respondents.

10] Accordingly, the impugned order of the MRT dated 16 May 2013 is set aside. The tenancy revision petition no. 85/B/2010 is

restored to the MRT for fresh decision in accordance with law. The MRT is directed to dispose of the revision petition within three months from today. The petitioners shall pay costs of Rs.5,000/- to the respondents and the MRT shall ensure that such costs are paid, before taking up the revision petition on merits. In case the costs are not paid within four weeks from today, then the impugned order dated 16 May 2013 shall stand confirmed.

11] It is made clear that this Court has not expressed any opinion on the merits of the matter. All contentions are consequently left open for decision by the MRT.

12] Parties to appear before the MRT on 10 March 2015 at 11.00 a.m. for obtaining further directions in the matter.

13] Rule is made absolute to the aforesaid extent. There shall be no order as to costs in this petition.

14] All parties to act on the basis of an authenticated copy of this order.

(M. S. SONAK, J.)